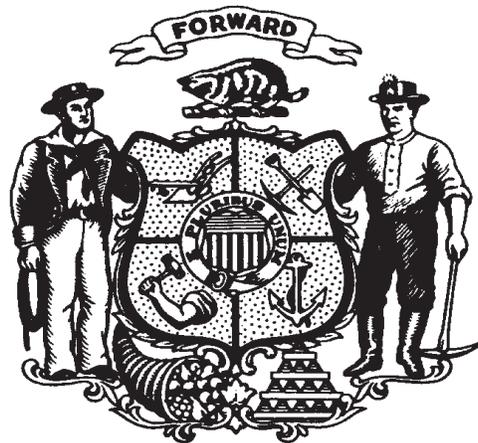


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Emergency rules now in effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Agriculture, Trade & Consumer Protection (2)

1. Rules adopted creating **ss. ATCP 99.13, 99.25, 100.13 and 101.25**, relating to the partial refund of certain agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors.

Finding of emergency

(1) The Wisconsin department of agriculture, trade and consumer protection currently administers an agricultural producer security program under ch. 126, Stats. ("producer security law"). This program is designed to protect agricultural producers from catastrophic financial defaults by contractors who procure agricultural commodities from producers.

(2) Under the producer security law, contractors pay annual assessments to an agricultural producer security fund ("the fund"). If a contractor defaults in payments to producers, the department may compensate producers from the fund. A contractor's annual fund assessment is based, in large part, on the contractor's annual financial statement. The producer security law spells out a formula for calculating assessments. However, the department may modify assessments by rule.

(3) The fund assessment formula is designed to require higher assessments of contractors who have weak financial statements (and may thus present greater default risks). But the statutory formula may generate unexpectedly high assessments in some cases, where a contractor's strong financial condition is *temporarily* affected by financial

transactions related to a merger or acquisition. This may cause unfair hardship, and may unfairly penalize some mergers or acquisitions that actually strengthen security for agricultural producers. This may have an unnecessarily adverse impact on contractors, producers and Wisconsin economic development.

(4) The department may adjust assessments by rule, in order to ameliorate unintended results. But the normal rulemaking process will require at least a year to complete. The temporary emergency rule is needed to address this matter in the short term, and to provide relief for contractors already affected.

Publication Date: January 29, 2004

Effective Date: January 29, 2004

Expiration Date: June 27, 2004

Hearing Dates: April 26 and 27, 2004

Extension Through: August 25, 2004

2. Rules adopted creating **ss. ATCP 99.135, 99.255, 100.135 and 101.255**, relating to the reduction of certain annual agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors.

Finding of emergency

(1) The Wisconsin department of agriculture, trade and consumer protection ("DATCP") currently administers an agricultural producer security program under ch. 126, Stats. ("producer security law"). This program is designed to protect agricultural producers from catastrophic financial defaults by contractors who procure agricultural commodities from producers.

(2) Under the producer security law, contractors pay annual assessments to an agricultural producer security fund ("the fund"). If a contractor defaults in payments to producers, DATCP may compensate producers from the fund. Fund assessments are calculated according to a statutory formula, but DATCP may modify fund assessments by rule.

(3) The law directs DATCP to obtain bonds or other backup security for the fund. The backup security is intended to protect producers against large contractor defaults that may exceed the capacity of the fund. But changes in the insurance and bonding industry have prevented DATCP from obtaining any backup security (DATCP has received no acceptable bids).

(4) Before the fund was created in 2002, contractors who failed to meet minimum financial standards were required to file individual security (typically a bond or letter of credit) with DATCP. The amount of security was based on the size of the contractor's producer payroll (potential default exposure). DATCP returned much of this security after the fund was created. But because DATCP was unable to obtain backup security for the fund, DATCP retained security from some of the largest contractors. DATCP did this in order to protect agricultural producers against large contractor defaults that might exceed the capacity of the fund.

(5) DATCP's action protected agricultural producers against catastrophic defaults, but imposed additional costs on some large contractors. The affected contractors (approximately 6 contractors) must now pay security costs *and* fund assessments. This emergency rule reduces fund assessments for these contractors, to compensate for the added security costs that the contractors must incur.

(6) This temporary emergency rule will provide needed financial relief (assessment reductions) to the affected contractors in the current license year, pending the adoption of permanent rules to provide longer term relief. This emergency rule will provide cost savings and fairer treatment to the affected contractors, consistent with the original intent of the producer security law, pending the adoption of permanent rules. This emergency rule will promote the public welfare by helping to maintain the security, stability and competitiveness of Wisconsin's agricultural economy and processing industry.

Publication Date: April 29, 2004
Effective Date: April 29, 2004
Expiration Date: September 26, 2004

Health and Family Services (Community Services, Chs. HFS 30—) (Medical Assistance, Chs. HFS 100—)

Rules adopted revising **chs. HFS 105 and 107** and creating **ch. HFS 36**, relating to standards for certification and criteria for determining the need for psychosocial rehabilitation services, and other conditions of coverage of community–based psychosocial rehabilitation services under the medical assistance program.

Exemption from finding of emergency

2003 Wisconsin Act 33, s. 9124 (10m) authorizes the Department to promulgate these rules using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. These are the emergency rules. Similar initial proposed rules were submitted to the Legislative Council Rules Clearinghouse on March 23, 2004.

Plain language analysis

The Department through this proposed order establishes the scope of community–based psychosocial rehabilitation services programs, standards for certification and criteria for determining the need for psychosocial rehabilitation services, and other conditions of coverage of community–based psychosocial rehabilitation services under the medical assistance program as authorized by ss. 49.45 (30e) and 51.42 (7) (b), Stats. The Department anticipates that the rules created in this order will complement services provided by existing community support programs under s. 51.421, Stats., by making a fuller array of mental health and substance–use disorder services potentially available to those in need in each county or tribe. The Department further anticipates that this order will allow for the creation of a broad range of flexible, consumer–centered, recovery–oriented psychosocial rehabilitation services to both minors and adults, including elders, whose psychosocial needs require more than outpatient therapy, but less than the level of services provided by existing community support programs. Certified community–based psychosocial rehabilitation services programs that meet the requirements of s. 49.45 (30e), Stats., and this order may be fully or partially funded by medical assistance with county or tribal match. These programs may also coordinate with other existing funding sources.

Publication Date: June 29, 2004
Effective Date: July 1, 2004
Expiration Date: November 28, 2004

Health and Family Services (Health, Chs. HFS 110—)

Rules adopted revising **ch. HFS 119**, relating to operation of the health insurance risk–sharing plan (HIRSP).

Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. These are the emergency rules. Department staff consulted with the Health Insurance Risk–Sharing Plan (HIRSP) Board of Governors on April 21, 2004 regarding the rules, as required by s. 149.20, Stats.

Plain language analysis

The State of Wisconsin in 1981 established a Health Insurance Risk–Sharing Plan (HIRSP). HIRSP provides major medical health insurance for persons who are covered under Medicare because they are disabled, persons who have tested positive for HIV, and persons who have been refused coverage or who cannot get coverage at an affordable price in the private health insurance market because of their mental or physical health conditions. Also eligible for coverage are persons who do not currently have health insurance coverage, but who were covered under certain types of health insurance coverage (called creditable coverage) for at least 18 months in the past. According to state law, HIRSP policyholder premium rates must fund sixty percent of plan costs. The remaining funding for HIRSP is to be provided by insurer assessments and adjustments to provider payment rates, in co–equal twenty percent amounts.

Publication Date: June 29, 2004
Effective Date: July 1, 2004
Expiration Date: November 28, 2004

Insurance

Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2004.

Finding of emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of an emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Actuarial and accounting data necessary to establish PCF fees is first available in December of each year. It is not possible to complete the permanent fee rule process in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2004.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No.

04-032, will be filed with the secretary of state in time to take effect October 1, 2004. Because the fund fee provisions of this rule first apply on July 1, 2004, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 18, 2004.

Publication Date: June 22, 2004
Effective Date: July 1, 2004
Expiration Date: November 28, 2004

Natural Resources (3) (Fish, Game, etc., Chs. NR 1-)

1. Rules adopted creating ss. NR 1.016, 1.05, 1.06 and 1.07 relating to Natural Resources Board policies on protection and management of public waters.

Finding of emergency.

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as "areas of special natural resource interest" or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

- Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

Publication Date: April 19, 2004
Effective Date: April 19, 2004*
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

* On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended these rules effective July 24, 2004.

2. Rules adopted revising chs. NR 10 and 19, relating to the regulation of baiting and feeding to control and manage chronic wasting disease and bovine tuberculosis.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule – making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD, bovine tuberculosis and other forms of transmissible diseases pose a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. The state legislature has also delegated to the department rule – making authority in 2003 Wisconsin Act 240 to regulate feeding of wild animals for non-hunting purposes including recreational and supplemental feeding. These restrictions on deer baiting and feeding need to be implemented through the emergency rule procedure to help control and prevent the spread of CWD, bovine tuberculosis and other forms of transmissible diseases in Wisconsin's deer herd.

Publication Date: June 10, 2004
Effective Date: June 10, 2004
Expiration Date: November 7, 2004

3. Rules adopted amending s. NR 25.09 (2) (b) 2. e., relating to commercial fishing with trap nets in Lake Michigan.

Finding of emergency

The use of the emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect public peace, health, safety or welfare. A statement of facts constituting the emergency is: The rule change will clarify the boundaries of the trap net area and thus reduce or prevent potential user conflicts between recreational and commercial fishers in the Manitowoc/Two Rivers area by changing the locations where commercial trap nets may be set from June 28 to Labor Day.

Publication Date: June 28, 2004
Effective Date: June 28, 2004
Expiration Date: November 25, 2004
Hearing Date: August 2, 2004
 [See Notice This Register]

Natural Resources (10) (Environmental Protection – Water Regulation, Chs. NR 300—)

1. Rules adopted revising ch. NR 300, creating ch. NR 310 and repealing ch. NR 322, relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waterways.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

- Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004*
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

*On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended s. NR 310.17 (4) (a).

2. Rules adopted revising **ch. NR 320**, relating to the regulation of bridges and culverts in or over navigable waterways.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust

waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

3. Rules adopted revising **ch. NR 323**, relating to fish and wildlife habitat structures in navigable waterways.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and

interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

4. Rules adopted revising **ch. NR 325**, relating to boathouses and fixed houseboats in navigable waterways.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as "areas of special natural resource interest" or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for

example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

5. Rules adopted revising **ch. NR 326**, relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as "areas of special natural resource interest" or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards

as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004*
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

*On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

6. Rules adopted revising **ch. NR 328**, relating to shore erosion control of inland lakes and impoundments.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as "areas of special natural resource interest" or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these

impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

*On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended several provisions of this emergency rule.

7. Rules adopted revising **ch. NR 329**, relating to miscellaneous structures in navigable waterways.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as "areas of special natural resource interest" or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

8. Rules adopted revising **ch. NR 340**, and creating **ch. NR 343**, relating to regulation of construction, dredging, and enlargement of an artificial water body.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

9. Rules adopted revising **ch. NR 345**, relating to dredging in navigable waterways.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

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To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

10. Rules adopted repealing **s. NR 340.02 (2), (8) and (19)** and to creating **ch. NR 341**, relating to regulation of grading on the bank of a navigable waterway.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams.

- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water–based recreation and tourism industry.

To carry out the intention of the Legislature that Act 118 will speed decision–making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for general permits and jurisdiction under the new law.

Publication Date: May 19, 2004
Effective Date: May 19, 2004
Expiration Date: October 16, 2004
Hearing Date: June 16, 2004

Public Instruction

Rules were adopted revising **ch. PI 35**, relating to financial reporting requirements under the Milwaukee Parental Choice Program.

Finding of emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Per 2003 Wisconsin Act 15, the provisions under the rule must take effect beginning in the 2004–05 school year. Because some of the reporting requirements must be made by August 1, the rule must be in place as soon as possible to give the private schools enough notice to meet such requirements.

Publication Date: June 30, 2004
Effective Date: June 30, 2004
Expiration Date: November 27, 2004

Veterans Affairs

Rules adopted creating **ch. VA 18**, relating to the administration of the registered nurse education stipend program.

Exemption from finding of emergency

The legislature by Section 9158 of 2003 Wisconsin Act 33 provides an exemption from a finding of emergency for the adoption of the rule.

Analysis prepared by the Department of Veterans Affairs.

Statutory authority: s. 45.365 (7), Stats.

Statute interpreted: s. 45.365 (7), Stats.

The creation of chapter VA 18 establishes the application process, eligibility criteria, stipend amount, repayment provisions, and employment requirements for the administration of the stipend program authorized by the legislature and governor in 2003 Wis. Act 33. The stipend program was enacted to provide stipends to individuals to attend school and receive the necessary credentials to become employed at the Veterans Homes operated by the Department of Veterans Affairs at King and Union Grove, Wisconsin.

Publication Date: March 30, 2004
Effective Date: March 30, 2004
Expiration Date: August 27, 2004
Hearing Date: June 18, 2004

Workforce Development (Labor Standards, Chs. DWD 270–279)

Rules adopted revising **ss. DWD 274.015 and 274.03** and creating **s. DWD 274.035**, relating to overtime pay for employees performing companionship services.

Finding of emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

On January 21, 2004, pursuant to s. 227.26(2)(b), Stats., the Joint Committee for Review of Administrative Rules directed the Department of Workforce Development to promulgate an emergency rule regarding their overtime policy for nonmedical home care companion employees of an agency as part of ch. DWD 274.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005, 103.02, and 227.11, Stats.

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that “no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is prejudicial to the person’s life, health, safety or welfare.” Section 103.01 (3), Stats., defines “place of employment” as “any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, or any express or transportation establishment or any hotel.”

Chapter DWD 274 governs hours of work and overtime. Section DWD 274.015, the applicability section of the chapter, incorporates the statutory definition of “place of employment” and limits coverage of the chapter to the places of employment delineated in s. 103.01 (3), Stats., and various governmental bodies. Section DWD 274.015 also provides that the chapter does not apply to employees employed in domestic service in a household by a household.

Section 103.02, Stats., directs that the “department shall, by rule, classify such periods of time into periods to be paid for at the rate of at least one and one-half times the regular rates.” Under s. DWD 274.03, “each employer subject to this chapter shall pay to each employee time and one-half the regular rate of pay for all hours worked in excess of 40 hours per week.” Section DWD 274.04 lists 15 types of employees who are exempt from this general rule and s. DWD 274.08 provides that the section is inapplicable to public employees.

Nonmedical home care companion employees who are employed by a third-party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01 (5) defines a mercantile establishment as a commercial, for-profit business. The chapter does not apply to companion employees of a nonprofit agency or a private household. In addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care companion employees of an agency. This provision is created

at s. DWD 274.035 to say that employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s. DWD 274.03. “Companionship services” is defined as those services which provide fellowship, care, and protection for a person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such services may include general household work and work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. The term “companionship services” does not include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

This order also repeals and recreates the applicability of the chapter section and the overtime section to write these rules in a clearer format. There is no substantive change in these sections.

Publication Date: March 1, 2004
Effective Date: March 1, 2004*
Expiration Date: July 29, 2004

* On April 28, 2004, the Joint Committee for Review of Administrative Rules suspended s. DWD 274.035 created as an emergency rule.

Scope statements

Commerce

Subject

Objective of the rule. The objective of the rule is to create chapter Comm 200 in response to 2003 Wisconsin Act 145. This Act directs each agency to develop rules to disclose in advance the discretion that the agency will follow in the enforcement of rules and guidelines against a small business.

Policy analysis

a) Existing policies. The Department currently does not have any specific rules relating to enforcement against small businesses as compared to other businesses.

b) New policies. This is a new policy initiative.

c) Policy alternatives. The alternative of not creating this code chapter would result in not complying with the directive in 2003 Wisconsin Act 145.

Statutory authority

Section 895.59 (2), Stats., as created by 2003 Wisconsin Act 145.

Staff time required

The Department estimates that it will take approximately 100 hours to develop this rule. This time includes drafting the rule and processing the rule through public hearings, legislative review and adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Comparison to federal regulations

There are no existing or proposed federal regulations that address or impact the activities to be regulated by this rule.

mortgage banking and mortgage brokering, establish standards for the approval by the loan originator council of curricula of education and minimum number of hours, prescribe the form and content for mortgage brokerage agreements, and prescribe the form and content of consumer disclosure statements. The requirements of Act 260 have yet to appear in the code. This rule will review and update administrative code provisions as needed regarding definitions, registration, the relationship between a loan originator and either mortgage banker or mortgage broker, the division's review of operations, record keeping requirements, continuing education and examination records, trust accounts, discipline, fee splitting, consumer mortgage brokerage agreements and consumer disclosures, penalties and private causes of action, and limitation on actions for commissions and other compensation, as affected by past acts and current industry practices. Pursuant to 2003 Act 260, the rule will also set forth the definition of loan solicitor, set forth guidelines regarding the examinations, curricula and hours; and set forth criteria for the form and content of the agreements and statements.

Statutory authority

Sections 224.72 (7p) and (8), 224.73 (3), 224.79 (1) and (2), and 227.11 (2), Stats.

Staff time required

500 hours.

Entities affected by the rule

Mortgage bankers and mortgage brokers may be affected by the rule.

Federal regulation addressing the activities

12 USC 2607 may affect the definition of loan solicitor.

Financial Institutions – Banking

Subject

Rules relating to mortgage bankers, mortgage brokers, loan originators and loan solicitors that may address definitions, registration, the relationship between a loan originator and either a mortgage banker or mortgage broker, the division's review of operations, record keeping requirements, continuing education and examination records, trust accounts, discipline, fee splitting, consumer mortgage brokerage agreements and consumer disclosures, penalties and private causes of action, and limitation on actions for commissions and other compensation.

Policy analysis

Chapters DFI—Bkg 40 to 43 have been affected by various acts since 1991; however, with the exception of the promulgation of ch. DFI—Bkg 41 regarding fees and registration pursuant to 1997 Act 45, these chapters have not been updated to reflect these acts and the statutory and substantive changes therein, or current industry practices. Most recently, 2003 Act 260 requires that the department, by rule, define loan solicitor, establish standards for the approval by the loan originator council of examinations in the law of

Natural Resources

Subject

Objective of the rules. The objective of the proposed rules is to establish a program to authorize and regulate fishing tournaments in Wisconsin.

Policy analysis

By rule, the Department of Natural Resources (DNR) currently requires a fishing tournament permit for contests that meet all of the following criteria: 1) The event is an organized fishing activity; 2) The event is on any water of the state, at any time; 3) Competition is the primary intent; 4) Prizes valued at \$500 or more are awarded for competition; 5) Participants number more than 40 individuals or 20 boats; 6) The waters to be fished are named; and 7) Participants are required to fish the same dates. The current rules, adopted in 1994, reflect the policy that permits are an information-gathering tool to determine the extent of tournament fishing in Wisconsin. The current rules do not provide much in the way of regulation, with only a few restrictions, such as: 1) no person may sponsor a fishing tournament less than two weeks apart; 2) no tournaments may be held on the opening weekend for that species; 3) the

department may specify prohibited areas to protect sensitive habitats; 4) the department may specify fish holding conditions; 5) the department may specify a tournament not be catch and release based on weather or water conditions; 6) the use of tagged fish is prohibited unless approved by the department to enhance data collection.

The department will establish an advisory committee consisting of fishing tournament sponsors, the conservation congress, sport fishing organizations, and users of lakes and streams in Wisconsin to advise the department in promulgating fishing tournament rules. Members of the advisory committee will be appointed by the Secretary. New fishing tournament rules promulgated will lead to new DNR policies. These new policies will lead toward more DNR regulation of fishing tournaments. The department, with input from a tournament advisory committee, may propose: 1) rules governing the circumstances in which a waiver of a permit can be granted; 2) rules establishing of a training or educational program for tournament sponsors; 3) rules that control crowding, prevent unsafe conditions or prevent conflicts among water users (i.e. boat launches or on the water); 4) rules that prevent waste of a natural resource; 5) rules that protect water bodies, fish and other aquatic resources; 6) rules that specify the number of tournaments that may be held on a water body and how often they may be held; 7) rules that specify the locations where tournaments may or may not be held; 8) rules that specify the fish species that may be targeted, bag and size limits for fish caught in fishing tournaments; 9) rules governing the time of year when tournaments may be held; 10) rules that specify the qualities of waters where tournaments may be held; 11) rule that specify reporting requirements; and 12) rules that establish fees for fishing tournament permits. The department will also establish a bass fishing tournament pilot program in which the impacts of culling/sorting fish will be evaluated on up to 4 bass tournaments per year for the next two years. Culling is not allowed in Wisconsin for any anglers, and this study which is established by the statute, will look at both biological and public perception issues.

The Department may separate the rule development into multiple rule orders to address individual policy issues.

Statutory authority

Sections 29.014, 29.024, 29.041, 29.403, 29.4035, 29.971 and 227.11, stats.

Staff time required

Approximately 2080 hours will be needed by the Department to develop these fishing tournament rules. In addition, the tournament advisory committee, consisting of members outside the Department, will spend approximately 260 hours.

Entities affected by the rules

The new rules may impact tournament anglers and organizers, and potentially those businesses and local communities that benefit from the tourism generated by events. New tournament rules will also have an impact on department staff, increasing work load for both fisheries and law enforcement staff.

Preliminary analysis of federal regulations

There are no federal regulations regarding fishing tournament regulations.

Regulation and Licensing

Subject

2003 Wisconsin Act 151 amended section 440.03 (13), Stats., concerning investigations of individuals applying for or holding credentials issued by the department. The amendment requires that investigations of criminal backgrounds of applicants for or holders of credentials issued by the department be made only pursuant to rules promulgated by the department.

Objective of the rule. To specify the process by which the department will investigate whether an applicant for or holder of specified credentials has been charged with or convicted of a crime.

Policy analysis

The department is charged with insuring the health, safety and welfare of the citizens or Wisconsin by maintaining oversight of its credential holders within the bounds of the law.

Statutory authority

Sections 227.11 (2) and 440.03 (13), Stats.

Staff time required

125 hours.

Comparison to federal regulations

This rule is created to facilitate acquisition of FBI criminal record reports for applicants and credential holders whose criminal backgrounds are being investigated for the purpose of protecting the health, safety and welfare of the public. The federal government does not partake directly in the licensing and regulation of the professions regulated by the Department of Regulation and Licensing. However, the federal government has mandated that the states which seek criminal records from the FBI for the purpose of professional licensing must do so by state statute. See Public Law 92–544.

Transportation

Subject

Objective of the rule. This rule making proposes to amend s. Trans 102.14 (1), relating to the issuance of driver licenses and identification cards, to allow for the driver license or identification card to be printed centrally and mailed to the customer using a centralized “print to mail” system.

Policy analysis

Trans 102.14 (1) requires the Department to directly issue driver license or identification card to the customer after the application has been processed and fees collected. To reduce fraudulent applications listing a false address, the Department is requesting the flexibility to mail driver licenses and identification cards. This change is to help ensure that driver licenses and identification cards go to people who live where they say they live. This change allows the Department to consider a centralized issuance system which may be more cost effective and efficient.

Comparison to federal regulations

Federal law requires background checks be completed on all CDL drivers with hazardous materials endorsements. This process will make compliance with the federal background check requirements easier (see amendments to s. 343.03 (5),

Stats., effective 9/30/2005), in that it will provide the Department with authority to hold licensing documents pending background check completion.

Description of all entities affected by the rule

Any person needing a driver license on short notice may be unable to obtain a permanent license document. However, they will receive an interim (temporary) paper document for identification and/or authority to operate a motor vehicle.

Statutory authority

Sections 343.02, 343.03 (5) and 343.14 (2) (f), Stats.

Staff time required

50 hours.

Transportation

Subject

Objective of the rule. This rule making proposed to repeal the time limit provisions applicable to political signs in ch. Trans 201.

Policy analysis

Section 84.30, Stats., prohibits the erection of signs within view of a federal highway except for purposes permitted under that statute. There is no exception in the statute permitting political expression by sign. In 1983 WisDOT adopted an administrative rule permitting signs to be erected

for campaign purposes without a permit. The rule places size and time of placement restrictions on the signs. The signs are not to be erected more than 45 days before a primary election and can remain up until 7 days after the election. Signs may be erected without a permit if they are 32 square feet or smaller.

A series of federal court decisions make clear that the existing time regulations in the administrative rule cannot withstand a constitutional challenge. Accordingly, WisDOT proposes to repeal the timing provisions of the rule.

An alternative method of achieving a similar end and regulating campaign signs would be to impose restrictions regarding signs on public campaign financing. Imposing such a restriction is not within WisDOT's statutory authority and would require legislative action.

Comparison to federal regulations

Other states and municipalities are also modifying their regulations to comply with federal court decisions.

Description of all entities affected by the rule

Any person will be allowed to erect signs containing political speech along highways under WisDOT jurisdiction without any restriction on the timing of sign placement.

Statutory authority

Section 84.30, Stats.

Staff time required

15 hours.

Submittal of rules to legislative council clearinghouse

*Please check the Bulletin of Proceedings – Administrative Rules
for further information on a particular rule.*

Commerce

Rule Submittal Date

On June 21, 2004, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Chapter Comm 14, relating to definitions of administrative expenses and substantial compliance.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 28, 2004. The Division of Environmental and Regulatory Services is the organizational unit responsible for promulgation of the proposed rule.

Agency Contact

Sam Rockweiler
608 266–0797

organizational unit responsible for promulgation of the proposed rule.

Agency Contact

Sam Rockweiler
608 266–0797

Commerce

Rule Submittal Date

On June 16, 2004, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Chapter Comm 87, relating to private sewage system replacement or rehabilitation grant program.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 3, 2004. The Division of – Safety and Buildings is the organizational unit responsible for promulgation of the proposed rule.

Agency Contact

Jean MacCubbin
608 266–0955

Gaming

Rule Submittal Date

On June 29, 2004, the Wisconsin Department of Administration submitted a proposed rule order to revise chs. Game 41 to 44 to the Wisconsin Administrative Code, to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Statutory Authority: Sections 16.004 (1), 227.11 (2) (a), 563.04 (3) and (14), and 563.05 (2), (3) and (4), Stats.

Statutes Interpreted: Sections 563.04, 563.05, 563.93 and 563.935, Stats.

The Department of Administration proposes to revise its administrative codes relating to charitable gaming and crane games. The revision process is in response to 2001 Wis. Act 16, requiring the department to promulgate rules that allow for the sale of equal shares of a single Class A raffle ticket to one or more purchasers. In addition, the revision process was conducted in order to ensure the Department exercises its regulatory oversight functions in an effective and efficient manner.

Agency Procedure for Promulgation

The Department will hold public hearings on the amended rules **August 2, 2004 and August 3, 2004.**

Agency Contact

The Division of Gaming is primarily responsible for promulgation of these rules.

If you have any questions regarding the rule amendments, please contact:

Brian Whittow
Department of Administration – Division of Gaming
Telephone (608) 270–2555
brian.whittow@doa.state.wi.us (Email)

Commerce

Rule Submittal Date

On June 30, 2004, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Chapter Comm 91, relating to equal speed of access to toilets at facilities where the public congregates.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 30, 2004. The Division of Safety and Buildings is the

Health and Family Services

Rule Submittal Date

On June 15, 2004, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Ch. HFS 57, relating to group foster homes for children.

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Agency Contact

Sally Hanko Dees
 Division of Children and Family Services
 P.O. Box 8916
 Madison, WI 53708-8916
 (608) 266-0415

Insurance**Rule Submittal Date**

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on June 29, 2004.

Subject Matter

These changes will affect Section Ins 2.80, 2.81 and ch. 50, Wis. Adm. Code, relating to mortality tables and actuarial opinions, analysis and reports.

Agency Procedure for Promulgation

The date for the public hearing is August 2, 2004.

Agency Contact

A copy of the proposed rule may be obtained the WEB sites at:

<http://www.state.wi.us/agencies/oci/ocirules.htm> or
<http://adminrules.wisconsin.gov>

or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264-8110. For additional information, please contact Fred Nepple at (608) 266-7726 or e-mail at Fred.Nepple@oci.state.wi.us in the OCI Legal Unit.

Natural Resources**Rule Submittal Date**

On June 15, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Ch. NR 1, relating to Natural Resources Board policies on protection and management of public waters.

Agency Procedure for Promulgation

Public hearings have been scheduled for July 27, 28, 29 and August 3, 2004.

The Bureau of Fisheries Management and Habitat Protection, is the organizational unit responsible for promulgation of the proposed rule.

Agency Contact

Mary Ellen Vallbrecht
 (608) 264-8554

Natural Resources**Rule Submittal Date**

On June 15, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Ch. NR 10, relating to 2004 migratory game bird seasons.

Agency Procedure for Promulgation

Public hearings have been scheduled for August 2, 3, 4 and 5, 2004.

The Bureau of Wildlife Management, is the organizational unit responsible for promulgation of the proposed rule.

Agency Contact

Kent Van Horn
 (608) 266-6841

Natural Resources**Rule Submittal Date**

On June 15, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Ch. NR 198, relating to aquatic invasive species control grants.

Agency Procedure for Promulgation

A public hearing have been scheduled for August 12, 2004.

The Bureau of Fisheries Management and Habitat Protection is the organizational unit responsible for promulgation of the proposed rule.

Agency Contact

Carroll Schaal
 (608) 261-6423

Natural Resources**Rule Submittal Date**

On June 15, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Chs. NR 300, 310 and 322, relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waterways.

Agency Procedure for Promulgation

Public hearings have been scheduled for July 27, 28, 29 and August 3, 2004.

The Bureau of Fisheries Management and Habitat Protection, is the organizational unit responsible for promulgation of the proposed rule.

Agency Contact

Mary Ellen Vallbrecht
 (608) 264-8554

Natural Resources**Rule Submittal Date**

On June 15, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Ch. NR 323, relating to fish and wildlife habitat structures in navigable waterways.

Agency Procedure for Promulgation

Public hearings have been scheduled for July 27, 28, 29 and August 3, 2004.

The Bureau of Fisheries Management and Habitat Protection, is the organizational unit responsible for promulgation of the proposed rule.

Agency Contact

Dale Simon
(608) 267-9868

Natural Resources

Rule Submittal Date

On June 15, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Ch. NR 325, relating to boathouses and fixed houseboats in navigable waterways.

Agency Procedure for Promulgation

Public hearings have been scheduled for July 27, 28, 29 and August 3, 2004.

The Bureau of Fisheries Management and Habitat Protection, is the organizational unit responsible for promulgation of the proposed rule.

Agency Contact

Liesa Nesta
(608) 267-7498

Natural Resources

Rule Submittal Date

On June 15, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Ch. NR 329, relating to miscellaneous structures in navigable waterways.

Agency Procedure for Promulgation

Public hearings have been scheduled for July 27, 28, 29 and August 3, 2004.

The Bureau of Fisheries Management and Habitat Protection, is the organizational unit responsible for promulgation of the proposed rule.

Agency Contact

Dale Simon
(608) 267-9868

Natural Resources

Rule Submittal Date

On June 15, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Ch. NR 809, relating to reporting of analytical data to the department and the procedure for returning to compliance following an MCL violation of the nitrate, nitrite or combined nitrate and nitrite standards.

Agency Procedure for Promulgation

Public hearings have been scheduled for July 13 and 14, 2004.

The Bureau of Drinking Water and Groundwater is the organizational unit responsible for promulgation of the proposed rule.

Agency Contact

Don Swailes
(608) 266-7093

Public Instruction

Rule Submittal Date

On June 21, 2004, the Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Ch. PI 35, relating to prorating under the Milwaukee Parental Choice Program.

Agency Procedure for Promulgation

Public hearings will be scheduled.

The Division of Finance and Management is primarily responsible for promulgation of this rule.

Agency Contact

If you have questions regarding this rule, you may contact Tricia Collins, Consultant, Milwaukee Parental Choice Program, at (608) 266-2853.

Rule–making notices

Notice of Hearing

Commerce

(Fire Prevention, Ch. Comm 14)

[CR 04–070]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.573 (5) and 101.574 (4) (a) 1., Stats., the Department of Commerce will hold a public hearing on proposed rules under section Comm 14.02 relating to definitions of administrative expenses and substantial compliance.

The public hearing will be held as follows:

Wednesday, July 28, 2004

Commencing at 9:30 a.m.

Thompson Commerce Center, Third Floor, Room 3B

201 West Washington Avenue

Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until August 2, 2004, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E–mail comments should be sent to srockweiler@commerce.state.wi.us. If e–mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Luann Robb at (608) 266–5824 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Analysis

Statutory Authority: ss. 101.573 (5) and 101.574 (4) (a) 1., Stats.

Statutes Interpreted: ss. 20.143 (3) (La), 101.14, 101.141, 101.573, and 101.575, Stats.

Under sections 101.14, 101.141, 101.573, and 101.575 of the Wisconsin statutes, the Department protects public health, safety, and welfare by promulgating rules for and administering fire inspection and prevention programs. Those programs include a Fire Dues program which is funded by fees from insurance companies, and which provides annual grants to city, village, and town fire departments for performing fire inspection and prevention services. Under 101.573 (5) and 101.574 (4) (a) 1. of the statutes, as established in 2003 Wisconsin Act 219, the Department is required to promulgate rules that (1) define its “administrative expenses” in the Fire Dues program, and (2) define the “substantial compliance” that the Department looks for in determining whether a local unit is eligible for a grant from the Fire Dues program.

Federal Programs

An Internet–based search of existing and proposed federal regulations did not identify any that address a fire dues program funded by fees from insurance companies.

Programs in Adjacent States

The four adjacent states were included in an e–mail survey of all State Fire Programs, that asked each State whether they collect a fee from insurance companies to help with fire prevention and suppression. Although responses were received from four other States, Illinois, Iowa, Michigan, and Minnesota did not respond, so the Department presumes the adjoining States do not have a fire dues program and corresponding rules that are similar to Wisconsin’s.

Data and Analysis of Impacts on Small Business

The proposed rules (1) codify the Department’s current designation of which of its expenses are administrative expenses and (2) extend the Department’s current practice of looking for “substantial compliance,” to also apply to determinations of whether local units annually inspect enough public buildings and places of employment, for fire prevention purposes. This extension would not reduce the current duty of local units to annually inspect 100 percent of public buildings and places of employment, but would provide more flexibility in determining whether that duty has been met, so as to establish eligibility for a Fire Dues grant. Consequently, these rules are not expected to result in significant impacts on small businesses.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

Owners or operators of public buildings or places of employment.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

No significant new reporting, bookkeeping or other similar procedures are expected.

3. Types of professional skills necessary for compliance with the rules.

None known.

Fiscal Estimate

The proposed rules (1) codify the Department’s current designation of which of its expenses are administrative expenses and (2) extend the Department’s current practice of looking for “substantial compliance,” to also apply to determinations of whether local units annually inspect enough public buildings and places of employment, for fire prevention purposes. This extension would not reduce the current duty of local units to annually inspect 100 percent of

public buildings and places of employment, but would provide more flexibility in determining whether that duty has been met, so as to establish eligibility for a Fire Dues grant. Consequently, these rules are not expected to result in significant changes to state or local revenues, or to state or local costs.

The proposed rules and an analysis of the rules are available on the Internet at the Web site for petroleum programs and fire prevention at commerce.wi.gov. Paper copies may be obtained without cost from Luann Robb at the Department of Commerce, Fire Prevention Section, P.O. Box 7839, Madison, WI 53707-7839, or at lrobb@commerce.state.wi.us, or at telephone (608) 264-5824 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Notice of Hearing
Commerce
(Plumbing, Chs. Comm 81 – 87)
[CR 04-068]

NOTICE IS HEREBY GIVEN that pursuant to ss. 145.245, Stats., the Department of Commerce will hold a public hearing on proposed rules relating to Private Sewage System Replacement or Rehabilitation Grant Program.

The public hearing will be held as follows:

Tuesday August 3, 2004

9:30 a.m.

TG Thompson Commerce Center

201 W. Washington Ave., Conf. Rm. 3C

Madison, WI

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **August 10, 2004**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to the following individual:

Jean M. MacCubbin, Department of Commerce

Safety & Buildings Division

P.O. Box 2658

Madison, WI 53701-2658

E-mail: jmaccubbin@commerce.state.wi.us.

Hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Analysis

Statutory authority: ss. 101.02 (1), 101.63 (1), 101.73 (2), and 145.02 (3) and (4), Stats.;

Statutes interpreted: ss. 145.02 (4), 145.2045, 145.135, 145.19, 145.20, 145.245 (7) (c) and (e), and 145.245 (8) (e), Stats.

Under s. 145.02, Stats., the Department of Commerce (Commerce) has the responsibility of safeguarding public health and the waters of the state relative to the construction,

installation and maintenance of plumbing. One mechanism of Commerce to fulfill this responsibility has been the promulgation of the state plumbing code, chapters Comm 81 to 87.

Under s. 145.245 (7) (c), Stats., Commerce shall revise the grant awards tables when it determines that 60% of current costs of private onsite wastewater treatment system (POWTS), rehabilitation or replacement exceeds the amount in the grant award tables by more than 10%, except that Commerce may not revise the grant award tables more often than once every two years. These tables were last revised in February 1999.

Under s. 145.245 (7) (e), Stats., Commerce shall promulgate rules that shall specify how the department will select, monitor and allocate the state share for experimental private onsite wastewater treatment systems that the Department funds under this chapter. Up to 10% of the annual funds shall be available for allocation for experimental POWTS, including monitoring of these systems.

The proposed revisions include minor changes to chapter Comm 87, private sewage system replacement or rehabilitation grant program. Since the last update of this chapter was undertaken in 1999, statutory changes and technical revisions to chapter Comm 83, POWTS became effective.

A summary of the significant rule revisions in chapter Comm 87 is as follows:

- The recommended increases in the maximum allowable financial assistance amounts, Tables 87.30-1 to 87.30-6, are based upon the average costs of those types of systems that received grant awards in FY 02, 03 and 04. The increases bring the amount allowed to the 60% approximate average costs in accordance with section 145.245 (7) (c), Stats. The table titles are amended to align with the technologies and methods now contained in chapter Comm 83.

- The definition of private sewage system was changed to POWTS to reflect current chapter Comm 83.

- Section Comm 87.20 is amended to clarify that the date of the system installation, not the age of the structure is a factor used in determining eligibility. Also section Comm 87.20 (4) was repealed and recreated to better clarify financial assistance amounts pertaining to existing systems installed for existing and replacement structures.

- Section Comm 87.60 is proposed to be repealed. The information on this section is proposed to be recreated in sections Comm 87.04 and 87.05 to better separate annual applications by governmental units to the department and applications by governmental units to participate in the program.

The rule revision also includes authority granted in the Wisconsin State Statutes as created by 2003 Act 169, relating to the use of holding tank costs when using the least costly method in determining grant awards.

An internet-based search regarding any Federal Regulations relating to a similar grant or loan program resulted in Title 40—Protection of Environment, Chapter I—Environmental Protection Agency Part 35—State and Local Assistance Sec. 35.001 Applicability. Subpart A—Environmental Program Grants. From the information available, it has been determined that these grant programs (40 CFR part 35-36) only apply at the municipal level and not for the homeowner or small business owner as in chapter Comm 87.

An internet-based search for comparing similar rules in the four surrounding states resulted in the following: Michigan has a similar program, the Strategic Water Quality Initiatives Fund, which is solely a loan, not a grant, program. This fund

has been available since November 2002 and to date no counties have shown interest in participation. An Illinois state revolving fund loan program, Water Pollution Control Revolving Fund, has been in effect since 1987. These loans are for municipalities and appear to be related to municipally–owned wastewater treatment facilities. In searching for comparable programs in the states of Iowa and Minnesota; no related funding programs (grants or loans) were found.

The proposed rule revisions were developed with the assistance of the 9–member Wisconsin Fund Advisory Code Council.

Member	Representing
Harry Butler	WI Onsite Wastewater Recycling Assn.
Ruth Fitzgerald	Wisconsin Liquid Waster Carrier Assn.
Dave Jones	Plbg, Heating & Cooling Contr. of WI
Tom Larson	Wisconsin Realtors Association
Steve Olson	Wisconsin Precast Concrete Association
Roger Plesha	Wisconsin Counties Association
Ted Rohloff	WI County Code Administrators Assn.
Lesley Roll	WI County Code Administrators Assn.
Todd Stair	Wisconsin Builders Association

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

Individuals or businesses so qualified to conduct POWTS inspections and maintenance may undertake maintenance of newly installed systems that receive financial assistance under the scope of this chapter.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

The proposed rules have no additional reporting or bookkeeping requirements, with the exception of possible inspection and maintenance reports.

3. Types of professional skills necessary for compliance with the rules.

No new skills are required. Maintenance, inspection and servicing events will continue to be performed as they are currently performed by an existing pool of credentialed individuals.

Fiscal Estimate

This rule proposal regarding the Wisconsin Fund Program would have no fiscal effect on state and local government because it would not substantially change administrative procedures of this program.

Contact Person

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division web site at <http://commerce.wi.gov/SB/SB–HomePage.html>.

Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program

Development Bureau, P.O. Box 2689, Madison, WI 53701–2689, or Email at rward@commerce.state.wi.us, or at telephone (608) 266–8741 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

Notice of Hearing Commerce (Sanitation, Ch. Comm 91) [CR 04–072]

NOTICE IS HEREBY GIVEN that pursuant to sections 101.02 (1) and 101.128 (2) (b) of the statutes, the Department of Commerce will hold a public hearing on proposed rules for chapter Comm 91, relating to equal speed of access to toilets at facilities where the public congregates.

The public hearing will be held as follows:

Date and Time:

Friday, **July 30, 2004**, commencing at 9:30 a.m.

Location:

Thompson Commerce Center, Third Floor, Room 3B
201 West Washington Avenue
Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until August 2, 2004, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be sent by e–mail to srockweiler@commerce.state.wi.us. If e–mail submittal is not possible, written comments may be addressed to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Analysis Prepared By Department of Commerce

Statutory Authority: ss. 101.02 (1) and (15) and 101.128 (2), Stats.

Statutes Interpreted: ss. 101.02 (1) and (15) and 101.128, Stats.

Under ss. 101.02 (1) and (15) of the statutes, the Department has authority to protect public health, safety, and welfare, at public buildings and places of employment, by promulgating and enforcing requirements for construction and maintenance of those facilities.

Under section 101.128 (1) (b) of the statutes, a “facility where the public congregates” is defined as having a general capacity or a seating capacity of 500 or more people. Under section 101.128 (2) (b) of the statutes, the Department must establish standards at these facilities, for ensuring that females have a speed of access to toilets which equals the speed of access that males have.

For public buildings, and for other structures and places of employment with public seating, the Department has established these standards in chapters Comm 61 to 65, which is the *Wisconsin Commercial Building Code*, and in chapter

Comm 90, which addresses public swimming pools and other water attractions.

The proposed rules would establish standards for facilities where the public congregates that are not addressed by the minimum number of plumbing fixtures required in chapters Comm 61 to 65, or 90. The proposed rules would *not* apply to any of these facilities that currently exist, unless either of the following occur: (1) new restrooms or other new toilet facilities are proposed, in which case the rules would apply only to the new restrooms or other new toilet facilities; or (2) more than 50% of the square footage of an existing restroom or other existing toilet facility is renovated, in which case the rules would apply only to the renovated portion.

The proposed ratio of two female toilets for every male toilet and every urinal is identical to the ratio that is contained in the *Wisconsin Commercial Building Code*, and is consistent with current national-level building code standards, which have been upgraded in recent years to achieve equal speed of access to toilets, particularly where large numbers of the public congregate.

An Internet-based search of existing and proposed federal regulations did not identify any that address equal speed of access to toilets.

An Internet-based search of adjacent states identified only Minnesota as having statewide rules that specify a ratio of female restroom facilities to male restroom facilities, at public gathering places which are similar to those addressed by the rules proposed here for Wisconsin. The Minnesota rules specify that the ratio of water closets for women to the total of water closets and urinals provided for men must be at least three to two, unless there are two or fewer fixtures for men; and this ratio is applied to places of public accommodation that are designed for occupancy by 200 or more people.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

Owners or operators of amusement or theme parks; or open arenas for rallies, concerts, exhibits or other assemblies, which are not addressed by the minimum plumbing-fixture requirements in either the *Wisconsin Commercial Building Code* or the Department's rules for public swimming pools and other water attractions.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

No significant reporting, bookkeeping or other similar procedures are expected.

3. Types of professional skills necessary for compliance with the rules.

None known.

Fiscal Estimate

The proposed rules are expected to apply to only a small number of places, i.e., those which (1) accommodate 500 or more people and are not addressed by the Department's rules for commercial buildings, or for public swimming pools and

other water attraction, and (2) have also been voluntarily provided with separate restrooms or other toilet facilities for males and females. Examples of these places include state or local parks, county or district fairs, and open arenas without a permanent structure for assembly, such as those used for rallies, concerts, exhibits or other assemblies.

The fiscal effect of the proposed rules on these state and municipal places is expected to be insignificant, because (1) the rules would apply only where separate restrooms or other toilet facilities are voluntarily provided; (2) unisex toilets can be provided, which would avoid application of the ratio; (3) portable toilets can be used, since the rules do not mandate water-flush toilets; and (4) the rules would not apply to existing places unless new toilets are provided or major renovation of a toilet facility occurs, in which case the rules would apply only to the new or renovated portion.

Contact Person

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at:
www.commerce.state.wi.us/SB/SB-HomePage.html.

Paper copies may be obtained without cost from Roberta Ward at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or at rward@commerce.state.wi.us, or at telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Notice of Hearings Gaming [CR 04-073]

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.004 (1), 227.11 (2) (a), 563.04 (3) and (14), and 563.05 (2), (3) and (4), Stats., and interpreting ss. 563.04, 563.05, 563.93 and 563.935, Stats., the Department of Administration will hold a public hearing to consider amendments to Chapters Game 41 to 44 of the Wisconsin Administrative Code, relating to charitable gaming and crane games.

Hearing Information

Date:	August 2, 2004
Time:	10:30 am
Location:	Eau Claire County Courthouse Room 2550 721 Oxford Avenue Eau Claire, Wisconsin
Date:	August 2, 2004
Time:	6:00 pm
Location:	Oshkosh City Hall Room 404 215 Church Avenue Oshkosh, Wisconsin
Date:	August 3, 2004
Time:	10:30 am
Location:	Waukesha Co. Admin. Bldg. – Room 155 1320 Pewaukee Road Waukesha, Wisconsin
Date:	August 3, 2004
Time:	2:30 pm
Location:	Wisconsin Division of Gaming 2005 W. Beltline Hwy, Suite 201 Madison, Wisconsin

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, should be directed to: Chris Patton, Department of Administration–Division of Gaming, PO Box 8979, Madison, WI 53708–8979. Written comments must be received by August 4, 2004, to be included in the record of rule–making proceedings.

Analysis Prepared By Department of Administration

The Department proposes to revise its administrative code relating to charitable gaming and crane games. The revision process is in response to 2001 Wis. Act 16, requiring the Department to promulgate rules that allow for the sale of equal shares of a single Class A raffle ticket to one or more purchasers. In addition, the revision process was conducted in order to ensure the Department exercises its regulatory oversight functions in an effective and efficient manner.

Fiscal Estimate

The proposed rule amendments are expected to have no fiscal impact on state or local governments.

Initial Regulatory Flexibility Analysis

The proposed rule amendments are expected to have no significant impact on small business.

A copy of the full text of the rule amendments and fiscal estimate may be obtained free of charge on the internet at www.doa.state.wi.us/gaming, by contacting the Division of Gaming at (608) 270–2555, or by visiting the Division of Gaming’s office at the address listed below.

Contact Person

If you have any questions regarding the rule amendments, please contact:

Brian Whittow

Department of Administration – Division of Gaming

2005 W. Beltline Hwy., Suite 201

PO Box 8979

Madison, WI 53708–8979

Telephone: (608) 270–2555

brian.whittow@doa.state.wi.us (email)

Notice of Hearing

Insurance

[CR 04–071]

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting ss. Ins 2.80, 2.81, and Chapter Ins 50, Wis. Adm. Code, relating to prescribing mortality tables and actuarial opinions, analysis and reports.

Hearing Information

Date: **Monday August 2, 2004**

Time: 10:30 a.m., or as soon thereafter as the matter may be reached.

Place: OCI, 2nd Floor,
125 S. Webster Street, Madison, WI

Written comments or comments submitted through the Wisconsin Administrative Rule website at: <https://adminrules.wisconsin.gov> on the proposed rule will be considered. The deadline for submitting comments is 4:00

p.m. on the 7th day after the date for the hearing stated in this Notice of Hearing.

Written comments should be sent to:

Fred Nepple

Legal Unit – OCI Rule Comment for Rule 2.81

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707–7873

Analysis

Statutes interpreted: ss. 600.01, 601.42, 623.02, 623.04, 623.06, 628.34, 632.43, Stats.

Statutory authority: ss. 600.01 (2), 601.41 (3), 601.42, 623.02, 623.04, 623.06, 632.43, Stats.

Explanation of the OCI’s authority to promulgate the proposed rule:

The proposed rule is promulgated under the commissioner’s statutory authority to prescribe valuation of liabilities, non–forfeiture values, and accounting standards and reporting for insurers. The rule is also promulgated under the commissioner’s authority to prescribe actuarial reporting and analysis by life insurers.

Related Statutes or rules: The proposed rule amends or references existing rules prescribing valuation of liabilities, non–forfeiture values, and actuarial reporting and analysis under ss. 601.42, 623.02, 623.04, 623.06, and 632.43 and ss. Ins 2.80 and ch. 50, Wis. Adm. Code.

5. The plain language analysis and summary of the proposed rule:

The proposed rule incorporates the National Association of Insurance Commissioners’ (“NAIC”) 2001 CSO Table into the current reserve and non–forfeiture valuation laws and rules. The rule would establish the new table as the minimum valuation standard for calculating reserves and nonforfeiture benefits for individual life insurance policies and extended term benefits issued after the effective date. The new table would be optional for newly issued policies until January 1, 2009 and mandatory after that date. The proposed rule also corrects references in the current rule establishing valuation standards (s. Ins 2.80, Wis. Adm. Code). The primary statutes interpreted by the proposed rule are the Standard Valuation Law (s. 623.06) and the Standard Nonforfeiture Law (s. 632.43).

The proposed rule is based on the NAIC model recognition of the 2001 CSO mortality table for use in determining minimum reserve liabilities and nonforfeiture benefits regulation and the NAIC revised model actuarial opinion and memorandum regulation. The CSO mortality table is not included in the NAIC model but is published separately by the NAIC. Accordingly it is adopted by reference under s. 601.41 (3) (b), Stats.

The proposed rule also revises the requirements for life insurers (including fraternal) as regards required actuarial opinions and memoranda. The proposed rule requires all life insurers to perform asset adequacy testing every year. The current rule provides an exemption, or limited scope of compliance, from asset adequacy analysis for smaller companies meeting certain conditions. The proposed rule also prescribes standards for the commissioner’s acceptance of actuarial opinions and reporting from companies based on the standards of their state of domicile. In addition, the proposed rule revises the required wording of the actuarial opinion, adds some additional requirements concerning the actuarial opinion and actuarial memorandum, and it creates a new requirement for the preparation of a summary of the actuarial memorandum called the “regulatory asset adequacy issues summary.”

NAIC Financial Regulation Standards and Accreditation Committee voted to expose the revised NAIC Actuarial Opinion and Memorandum Regulation for comment for a two-year period, beginning January 1, 2003. The NAIC is seeking comment on whether the revised Model should be adopted as a mandatory requirement for accreditation of a state and may recommend that it be required as an accreditation standard effective in calendar year 2007.

The 2001 CSO mortality table changes are effective for policies issued on or after January 1, 2005. The revised actuarial opinion and memorandum requirements are effective for reporting requirements for calendar year 2005 and subsequent calendar years.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Not applicable. There is no such federal regulation.

7. Comparison of similar rules in adjacent states as found by OCI:

Iowa: Iowa has the current version of, and has not adopted the revised, NAIC model actuarial opinion and memorandum regulation. Iowa has adopted the NAIC model recognition of the 2001 CSO mortality table for use in determining minimum reserve liabilities and nonforfeiture benefits regulation.

Illinois: Illinois has the current version of, and has not adopted the revised, NAIC model actuarial opinion and memorandum regulation. Illinois has adopted the NAIC model recognition of the 2001 CSO mortality table for use in determining minimum reserve liabilities and nonforfeiture benefits regulation.

Minnesota: Minnesota has the current version of, and has not adopted the revised, NAIC model actuarial opinion and memorandum regulation. Minnesota has adopted the NAIC model recognition of the 2001 CSO mortality table for use in determining minimum reserve liabilities and nonforfeiture benefits regulation.

Michigan: Michigan has the current version of, and has not adopted the revised, NAIC model actuarial opinion and memorandum regulation. Michigan has not adopted the NAIC model recognition of the 2001 CSO mortality table for use in determining minimum reserve liabilities and nonforfeiture benefits regulation.

Indiana: Indiana has adopted the NAIC revised model actuarial opinion and memorandum regulation. Indiana has adopted the NAIC model recognition of the 2001 CSO mortality table for use in determining minimum reserve liabilities and nonforfeiture benefits regulation.

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

The American Academy of Actuaries report to the NAIC's Life and Health Actuarial Task Force states the basis for its recommendation for the new 2001 CSO mortality table (the basis for OCI's proposal of this rule authorizing the use of the 2001 CSO mortality table) as follows:

"The current statutory valuation standard, the 1980 CSO Table, is more than 20 years old. As is shown in this report, current mortality levels, represented by the 2001 Valuation Basic Table, are lower than the mortality levels underlying the 1980 CSO Table. The current valuation mortality standard produces reserves, excluding deficiency reserves, that overall are higher for the illustrated model office than those produced by the proposed 2001 CSO Table.

At the request of the LHATF, both the SOA and the Academy have worked to develop a proposed mortality table intended to replace the 1980 CSO Table in the current statutory valuation structure. While the Academy's Life Practice Council believes that a move to a valuation system that provides more actuarial flexibility and responsibility to set reserves that reflect individual company characteristics is desirable, we recognize that a new table is appropriate. The new table is more consistent with current experience and will result in reserves, excluding deficiency reserves, that overall are approximately 20 percent lower than those produced by the 1980 CSO Table.

The following analysis compares reserves calculated using the proposed ultimate 2001 CSO Table to those calculated using the ultimate 1980 CSO Table. Deficiency reserves were not considered. CRVM reserves for individual cells were weighted using a relatively simple model office (consisting of three plans, five ages, and both genders) based on industry business distributions obtained from LIMRA International. To produce a single number for comparison, the Academy Task Force assumed that sales levels increased at five percent per year and focused its analysis on results after 10 and 20 years.

Table 1
Comparison of Basic Reserves on the Proposed 2001 CSO Table to Basic Reserves on the 1980 CSO Table (aggregated results)

	<u>After 10 years</u>	<u>After 20 years</u>
Overall	79.0%	82.4%
Gender		
Male	76.5%	80.2%
Female	85.6%	87.7%
Plan		
Whole Life	85.6%	86.9%
20 Year Level Premium Term	68.4%	68.7%
Level Premium to Zero UL . .	95.0%	98.8%
Age		
25	80.9%	84.9%
35	74.8%	79.8%
45	78.7%	82.5%
55	79.8%	81.9%
65	81.2%	84.2%

This table shows that overall basic reserves are about 20 percent lower under the proposed 2001 CSO Table. The reduction is larger for males than for females, reflecting the larger reduction in mortality rates for males. Term insurance exhibits the largest reductions, followed by whole life. The level premium to zero UL plan shows the smallest reductions because reserves cannot be less than cash values and the cash value typically determines the reserve by the sixth to eighth duration under both the new and old tables. When the cash value determines the reserve, reserves are the same under both tables. The biggest reductions will be seen at age 35 while the smallest reductions will be seen at ages 25 and 65."

The proposed revisions to the actuarial opinion and memorandum requirements under ch. 50, Wis. Adm. Code, are based on the recommendations of the NAIC Life and Health Actuarial Task Force ("Task Force") which were adopted by the NAIC in 2001.

All life insurers are required to file an actuarial opinion with their annual financial statement. In 1991, the NAIC

adopted the model actuarial opinion and memorandum regulation which, in essence, established a two-tier system for these opinions. Companies whose admitted assets exceed \$500 million are required to conduct sufficient tests such that they can certify that their assets “make adequate provision” for their liabilities, i.e., their actuaries must perform an asset adequacy analysis. Under certain conditions, companies whose admitted assets fall below \$500 million are exempt from this requirement, and need only certify that their reserves have been computed in accordance with the formulas specified in the law. The Task Force recommended removal of the exemptions, thereby requiring all companies to demonstrate the adequacy of their reserves. The Task Force was in agreement with the position expressed by the State Variations in Valuation Laws Task Force of the American Academy of Actuaries in its May 10, 1996, report.

The Task Force received the assistance of the Actuarial Standards Board, which developed revised standards of actuarial practice relative to this matter. They provide for the actuary to perform necessary testing based on the degree of risk inherent in the contracts sold. This ranges from very little (in some cases only intermittent testing is necessary) to cash flow modeling. This availability of a range of methods will allow each company to choose the one (or combination) which best fits its circumstances, thereby minimizing the expense each will incur in fulfilling this requirement.

The current actuarial opinion and memorandum rule requires all companies to file an actuarial opinion that the reserves 1) meet the requirements of the law of the state of domicile and 2) are at least as great, in the aggregate, as required by the state in which the filing is made. The Task Force recommended that each state provide for three options that may be used in lieu of simply requiring the “state of filing” opinion. In essence, the options permit a “state of domicile” opinion, but they require that certain financial standards be met or that financial information be provided so that the state of filing can make an informed decision as to whether the domestic state’s reserve laws, reasonably meet the state of filings standards. The Task Force also recommended, based on experience with the current model regulation, revisions that include updated requirements for documentation of the various assumptions, economic scenarios, and product features incorporated into the asset adequacy analysis and a “Regulatory Asset Adequacy Issues Summary.”

9. Any analysis and supporting documentation that OCI used in support of OCI’s determination of the rule’s effect on small businesses under s. 227.114:

OCI reviewed financial statements and other reports filed by life insurers and fraternal insurers and determined that none qualify as small businesses.

10. If these changes will have a significant fiscal effect on the private sector, the anticipated costs possibly incurred by private sector:

This rule is not expected to have a significant impact on the private sector. There are only a few insurance companies that are not already performing the analysis required by this rule. The few who are newly required to conduct cash flow analysis may incur initial costs of \$2500 to \$25000. In addition they may require specialized software for an initial cost of \$15000. Many companies who are newly required to perform analysis will incur lower costs. Compliance in subsequent years is likely to range in cost from \$2500 to \$12000.

11. Effect on Small Business:

None

12. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the WEB sites at:

<http://oci.wi.gov/ocirules.htm>, or

<https://adminrules.wisconsin.gov> or by contacting:

Inger Williams, OCI Services Section

Phone: (608) 264-8110

Email: Inger.Williams@OCI.State.WI.US

Address: 125 South Webster St – 2nd Floor
Madison WI 53702

Mail: PO Box 7873, Madison WI 53707-7873

13. Place where comments are to be submitted and deadline for submission:

The deadline for submitting comments is 4:00 p.m. on the 7th day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Fred Nepple

Legal Unit – OCI Rule Comment for Rule 2.81

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Street address:

Fred Nepple

Legal Unit – OCI Rule Comment for Rule 2.81

Office of the Commissioner of Insurance

125 South Webster St – 2nd Floor

Madison WI 53702

WEB Site: <https://adminrules.wisconsin.gov>

Fiscal Estimate

There will be no state or local government fiscal effect.

Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet WEB site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Services Section, OCI, at: Inger.Williams@OCI.State.WI.US, (608) 264-8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

Notice of Hearing

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 (1), 29.041, 29.519 (1) (b), 227.11 (2) (a) and 227.24, Stats., interpreting ss. 29.041, 29.014 (1) and 29.519 (1) (b), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FH-49-04(E) pertaining to commercial fishing with trap nets in Lake Michigan. This emergency order took effect on June 28, 2004. This rule moves an area designed for commercial trap nets during summer from its present location in waters 75 to 150 feet in depth west and south of Two Rivers to an area of similar depths north of Two Rivers.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

Monday, August 2, 2004 at 5:30 p.m.
WI Training Room, Lake Shore Tech. College
1290 North Avenue
Cleveland

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Impact

No significant fiscal impact on state and local government is anticipated.

Written comments on the emergency rule may be submitted to Mr. William Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than August 12, 2004. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule may be obtained from Mr. Horns.

Notice of Hearing Public Instruction [CR 04-069]

NOTICE IS HEREBY GIVEN That pursuant to ss. 119.23 (2) (b) and (11) and 227.11 (2) (a), Stats., and interpreting s. 119.23 (2) (b), Stats., the Department of Public Instruction will hold a public hearing as follows to consider the amending of Chapter PI 35, relating to the prorate method to be used under the Milwaukee Parental Choice Program. The hearing will be held as follows:

Date & Time	Location
August 4, 2004	Milwaukee
4:00 – 6:00 p.m.	Milwaukee Area Technical College 700 W. State Street Room S120

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please contact Tricia Collins, Consultant, Milwaukee Parental Choice Program, tricia.collins@dpi.state.wi.us, (608) 266-2853, or leave a message with the Teletypewriter (TTY), (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

The administrative rule and fiscal note are available on the internet at:

<http://www.dpi.state.wi.us/dpi/dfm/pb/mpcprate.html> and <http://www.dpi.state.wi.us/dpi/dfm/pb/mpcpratefn.html>, respectively. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

Lori Slauson, Administrative Rules and Federal Grants
Coordinator
Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above mailing or email address no later than August 3, 2004, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

Statute interpreted: s. 119.23 (2) (b), Stats.

Statutory authority: ss. 119.23 (2) (b) and (11) and 227.11 (2) (a), Stats.

Explanation of agency authority

Section. 119.23 (2) (b), Stats., requires the department to establish a prorate method for the department to utilize when the number of eligible students applying for the program exceeds the statutory limit. Because the department is interpreting the provisions of this statute and administers/enforces the program governed by it, s. 227.11 (2) (a), Stats., gives the department general rule-making authority.

Section 119.23 (11), Stats., gives the department authority to promulgate rules to implement and administer the entire program.

Court decisions directly relevant: None.

Related statute or rule: None.

Plain language analysis:

Under s. 119.23 (2) (b), Stats., no more than 15% of Milwaukee Public School's (MPS) membership (approximately 15,000 students) may attend private schools under the MPCP. The department is required to prorate the number of spaces available at each participating private school if in any school year there are more spaces available than the maximum number of students allowed to participate in the program. The proposed rules will set forth the process by which the department would prorate student spaces in the MPCP giving preference to pupils in the following order: continuing pupils in the choice program, siblings of continuing pupils, four-year-old kindergarten pupils and their siblings, five-year-old kindergarten pupils and their siblings, and all other pupils. By May 1 the department will notify the parents of eligible pupils whether or not the pupil may apply for the choice program for the upcoming school year.

The rules changed the current admission process by separating it into two parts, one for eligibility determination and one for an application phase. The approximate timeline for the process is as follows:

February – March. The private school must determine a pupil's eligibility to participate in the program.

Within 14 days of the parents request, but no later than April 5, the private school must 1) notify the parent whether or not the pupil is eligible for the program and 2) submit to the department a copy of the pupil's eligibility form approved by the private school.

May. A private school shall accept choice program applications from parents of pupils notified by the department that they may apply for the program.

By June 5, a private school shall notify each applicant and the applicant's parent of his or her acceptance or nonacceptance into the private school.

By June 20, the pupil's parent must notify the private school of the pupil's intent to attend the private school. If such

notice is not given, the private school may fill the pupil's seat with another choice pupil.

By June 30, a private school must submit to the department a class list of the choice pupils and the randomly determined choice program waiting list.

Summary of, and comparison with, existing or proposed federal regulations: None.

Comparison with rules in adjacent states: None.

Summary of factual data and analytical methodologies:

The department anticipates the program reaching the 15% cap in the 2005–06 school year. Therefore, the prorate process would begin February 1, 2005. The department would like the rule in place as soon as possible in order to provide adequate notice to participating schools and parents.

To determine the prorate method, the department worked with all the participating private schools and interested parties. In an effort to get as much input as possible early on in the process, the department:

Sent out a survey to all current participating schools in December 2003. Of the 106 private schools surveyed, 25 returned the survey. Of those 25 only 7 provided prorate options. The options provided included 1) giving preference to schools with a history of success or long tenure, 2) grandfathering current students, 3) first come, first serve, and 4) using mathematical formulas (percentages, ratios, averages, etc.).

Met with the Assembly Committee on Education Reform in January 2004. Department staff discussed committee concerns with the prorate requirement. Members suggested prorate options including grandfathering provisions and mathematical formulas. Some members appeared interested in considering a method that ensures current choice students could continue to participate in the program.

Met with people in small group settings. The options discussed with the small groups included: 1) straight prorate (plain read of the statutes), 2) prorate based on capacity, 3) prorate based on percentage of choice students from prior

years, and 4) student-based method with preference given to current students, siblings and kindergarten students.

In summary, the information provided at the above meetings suggested a strong dislike for a straight prorate method. The preferred prorate option appeared to be a method that would give preference to continuing students and their siblings with new available spaces being given to kindergarten students.

The department believes that the prorate method proposed in this rule, based heavily on the input received, is a fair way to implement the prorate requirement under the statute.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: None.

Anticipated costs incurred by private sector: None.

Fiscal Estimate

These rules will not have a fiscal effect on the private schools participating in the program, MPS, or small businesses.

These rules will have a fiscal effect on the department. The department will have to develop a random selection process to determine which students can participate in the program. At a minimum, the department will have to notify 15,000 parents whether or not their child will be able to apply to participate in the program. The department will have an annual cost of \$24,600 for postage and printing costs. Because of the application date change, the department will have a one-time cost in FY05 of approximately \$16,500 to contract with a private vendor for data entry. In FY05, the first year of implementation of the prorate method, the department will have to enter applications covering two school years. Specifically, the department will have to process 2004–05 applications starting in July 2004 and ending in January 2005 and 2005–06 applications in April 2005. In future years, data entry will only take place in April.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114(1)(a), Stats.

Submittal of proposed rules to the legislature

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

Agriculture, Trade and Consumer Protection

(CR 03–121)

Chapters ATCP 10, 11 and 12, relating to captive wildlife.

Agriculture, Trade and Consumer Protection

(CR 04–005)

Chapters ATCP 10, 12, 42, 50, 60, 74, 80, 92, 118, 134, 140 and 162, relating to remedial technical rule changes.

Agriculture, Trade and Consumer Protection

(CR 04–030)

Chapters ATCP 99, 100 and 101, relating to agricultural producer security.

Commerce

(CR 03–097)

Chapters Comm 20 and 21, relating to inspection, spindle spacing and exiting under the Uniform Dwelling Code.

Natural Resources

(CR 03–054)

Chapter NR 118, relating to the lower St. Croix Scenic Riverway.

Natural Resources

(CR 04–046)

Chapters NR 10 and 19, relating to hunting and trapping.

Veterans Affairs

(CR 04–037)

Chapter VA 18, relating to the administration of the registered nurse education stipend program.

Rule orders filed with the revisor of statutes bureau

The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.state.wi.us or (608) 266-7275 for updated information on the effective dates for the listed rule orders.

Agriculture, Trade and Consumer Protection (CR 03-120)

An order affecting ch. ATPC 40, relating to fertilizer tonnage fee surcharges for agricultural chemical cleanup program.

Effective 9-1-04.

Natural Resources (CR 03-091)

An order affecting ch. NR 116, relating to the definition of a deck and provision that the construction of deck is not a modification or addition to a nonconforming structure.

Effective 9-1-04.

Natural Resources (CR 04-020)

An order affecting chs. NR 10 and 19, relating to the control and management of chronic wasting disease.

Effective 9-1-04.

Notice of suspension of an administrative rule

The Joint Committee for the Review of Administrative Rules met in Executive Session on June 24, 2004 and adopted the following motions:

Emergency Rule NR 1.1016, 1.05, 1.06 and 1.07 Relating to Natural Resources Board policies on protection and management of public waters. Moved by Welch, second by Grothman, that, the Joint Committee for Review of Administrative Rules, pursuant to ss. 227.19 (4) (d) 1., 3., and 6. and 227.26 (2) (d), Stats., suspends emergency rule ch. NR 1 with the suspension to take effect on July 24, 2004.

Motion Carried: 6 Ayes, 3 Noes, 1 Absent

Emergency Rule NR 326 Relating to regulation of piers, wharfs, boat shelters, boat hoists, boatlifts, and swim rafts in navigable waterways. Moved by Welch, second by Grothman, that, the Joint Committee for Review of Administrative Rules, pursuant to ss. 227.19 (4) (d) 3. and 6. and 227.26 (2) (d), Stats., suspends emergency rule ch. NR 326.

Motion Carried: 6 Ayes, 3 Noes, 1 Absent

Emergency Rules NR 310 and NR 328 Relating to timelines and procedures for exemptions, general permits, and individual permits for activities in navigable waterways; Relating to shore erosion control of inland lakes and impoundments. Moved by Welch, second by Grothman, that, the Joint Committee for Review of Administrative Rules, pursuant to ss. 227.19 (4) (d) 3. and 6. and 227.26 (2) (d), Stats., suspends the following emergency rule provisions:

- a. Section NR 310.17 (4) (a).
- b. Section NR 328.04 (3) 9c), (4) (e), (5) (c), and (6) (b).
- c. Section NR 328.05 (4) (f) and (j) and (5) (f).
- d. In s. NR 328.06 (4) (intro.), the phrase "or moderate."
- e. Section NR 328.07 (3).

Motion Carried: 6 Ayes, 3 Noes, 1 Absent

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